

Before The
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

PROCEDURES RELATED TO
COMMISSION VIEWS

Docket No. RM2015-14

**UNITED STATES POSTAL SERVICE REPLY COMMENTS
ON PROCEDURES RELATED TO COMMISSION VIEWS
(September 11, 2015)**

Pursuant to Order No. 2602, the United States Postal Service (Postal Service) hereby provides its reply comments with respect to proposed rules regarding the Postal Regulatory Commission (Commission) providing its views to the Secretary of State on proposals before the Congress of the Universal Postal Union (UPU) that could affect market dominant rates or classifications.

BACKGROUND

On July 21, 2015, the Commission issued Order No. 2602 proposing new regulations regarding the process by which the Commission provides its views to the Secretary of State on proposals before the Congress of the UPU that could affect market dominant rates or classifications. On August 27, 2015, the Postal Service, Public Representative, and FedEx Corporation (FedEx) filed comments in response to these proposed regulations. On August 28, 2015, Joyce Dillard (Dillard) filed comments.

These reply comments focus on those comments filed by the Public Representative, FedEx, and Dillard.

ANALYSIS

A. Public Representative

The Public Representative generally supported the proposed rules and focused her comments on two issues, increased transparency of the Commission's development of its section 407 views by making proposals available to the public during the public solicitation process and favoring the filings of reply comments in the proposed rules. The Postal Service disagrees with these two comments from the Public Representative.

First, UPU proposals generally are not publicly available documents, and the Commission should not take it upon itself to make public those documents not already available. The Public Representative remarks that, absent the Commission providing the proposals, the public is not in a position to provide meaningful feedback. The ability to provide insightful comments to the Commission on how the Commission should undertake its statutory role, however, is not dependent on knowing the details in the specific proposals. As is evident from the prior public inquiry docket, members of the public can provide broad policy objectives and principles to guide the Commission in its role.¹ Moreover, specific comments on a proposal by proposal basis will significantly burden the commenters and the Commission without providing the overarching opinions of the commenters that are most beneficial to the Commission in developing its views. In addition, the Commission's proposed rule 3017.3(a) already sets forth that when a specific proposal is relevant and deemed significant to assist in developing the Commission's view, the Commission will seek comments on that specific proposal.² As

¹ See Docket No. PI2012-1.

² Hundreds of proposals are generally submitted for decision at a UPU Congress. Given the short timeframe for public solicitation, the Commission likely would be unable to determine

drafted, the proposed rules appropriately seek general comments on relevant proposals that impact market dominant rates and classifications and specific proposals when determined necessary. There is no need to provide additional proposals for public comment.

Second, reply comments in future dockets seeking to aid the Commission's development of its section 407 views are unnecessary and only serve to delay the Commission proceedings. As has occurred in the past, the Commission specifically set forth the policies and scope of the comments it was soliciting from the public.³ Those presenting comments were provided ample opportunity to evaluate, develop, and submit comments covering the entire scope of the subject matter in question. Moreover, the process of the Commission soliciting comments is not an adversarial proceeding amongst parties requiring a point and counterpoint argument. Instead, commenters should provide their own views to the Commission on issues deemed important to them. The Commission, per the proposed rules, will then use the public input to develop its views. Simply, there is no need for reply comments, as they only serve to lengthen the proceeding and restate views already set forth in the initial comments. As such, the Postal Service disagrees with the Public Representative that any change is required to permit reply comments.

which of the hundreds of proposals that impacts market dominant rates and classifications before soliciting public comment. Thus, the Commission would be forced to either provide every proposal, which results in many more proposals being reviewed by the public than necessary, or to only provide those specific proposals that it deems significant, as the proposed rules permit.

³ See Order No. 1420, Docket PI2012-1 (July 31, 2012).

B. FedEx

FedEx's comments first explain why it believes that it is important for the Commission to provide "well-considered" views to the Secretary of State on proposals before the UPU Congress.⁴ FedEx then asserts that the Commission's statutory obligation to provide its views to the Secretary of State constitutes the issuance of an agency rule pursuant to the Administrative Procedure Act, thereby requiring a formal rulemaking process before the Commission provides its views. This assertion is simply wrong. Finally, FedEx provides specific comments on proposed rules. Each of these points by FedEx will be discussed in turn.

First, in support of its assertion that the Commission must abide by the APA rulemaking requirements, FedEx cites part of the definition of "rule" in 5 U.S.C. § 551(4)⁵. This partial citation, however, begins the problem with its analysis. A complete understanding of the definition of "rule," as analyzed below, clearly establishes the views of the Commission are not a rule subject to the APA rulemaking requirements.

In analyzing why the Commission's views to the Secretary of State constitute a rule, FedEx simply states that "[t]here can be no reasonable doubt that the Views are a

⁴ The Postal Service notes that FedEx also espouses its views on the current UPU policies and hypothetical UPU proposals. As the comments at issue in this docket relate to the proposed rules and not UPU proposals, either those in the past or hypothetical proposals in the future, the Postal Service finds it inappropriate to respond to this aspect of FedEx's comments.

⁵ A complete recitation of section 551(4) is "'rule' means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing."

“rule” as defined by the APA.”⁶ By contrast, the Postal Service asserts that there can be no well-developed analysis that concludes that the views are a rule. An APA rule is required to “implement, interpret, or prescribe law or policy.” An examination of each of these characteristics separately as they relate to the role of the Commission in section 407(c)(1) shows that the views cannot be a rule. Implementation of a law or policy requires an action that results in an impact on a specific party. Here the views are merely the position of the Commission regarding proposals used to assist the Secretary of State in making foreign policy decisions. Interpretation relates to an agency action to review and provide a true meaning or understanding as to language. Section 407(c)(1) does not involve any interpretation by the Commission. Finally, the views espoused by the Commission do not prescribe law or policy within the purview of the Commission. The Commission’s views submitted to the Secretary of State have no legal or policy ramifications but instead provide interagency guidance. As such, these views are not a rule under the APA and the Commission need not comply with the formal rulemaking requirements of title 5 of the United States Code.

Second, FedEx asserts that proposed rules 3017.3 must be expanded to not only include proposals before the UPU Congress as the rules set forth, but all proposals before any UPU body that impact rates or classifications of market dominant products. This assertion is directly counter to the plain reading of section 407(c)(1). In its comments, FedEx focuses on the word “agreement,” which is different and distinct from what is set forth in the statute. Section 407(c)(1) notably only requires the Secretary of State to seek the Commission’s view prior to “concluding any treaty, convention, or

⁶ FedEx Comments at 8.

amendment.” These terms are distinctly different from an “agreement” as interpreted by FedEx. As such, the Commission properly focused these proposed rules on issues governed by treaty, convention or amendment, that is the UPU Congress. Section 407(c)(1) only applies to decisions taken by the United States, though the Secretary of State, at the UPU Congress, and thus the Commission need not create a procedure for public solicitation of comments for every UPU proposal at meetings between UPU Congresses.

Ultimately, FedEx’s assertions regarding APA requirements for the section 407(c) process lack merit and the Commission need not incorporate any APA requirements into its rules. Likewise, its comments on proposed rule 3071.3 are unnecessary and counter to section 407(c)(1).

C. Dillard

Dillard’s comments focus on the second provision in proposed rule 3017.4, which states:

(b) The Commission may suspend or forego solicitation of public comments if it determines that such solicitation is not consistent with timely submission of Commission views to the Secretary of State.

Dillard disagrees with the premise that the Commission should be permitted to forego public comment based on the convenience of the Commission’s schedule. Instead she believes that the Commission should develop its schedule for reviewing proposals to be advanced at the UPU Congress and developing its views on those proposals to ensure that the public is provided opportunity to provide its comments. The Postal Service opposes Dillard’s comments. Because of the UPU Congress schedule for proposals, the ability for the Commission to seek public input, develop the Commission’s views,

and submit them to the Secretary of State with sufficient time for those views to be of assistance at the UPU Congress may, at some times, be hampered. As the proposed rules provide, the Commission should maintain the ability to forego solicitation of comments when necessary, especially when the submission of the Commission's views to the Secretary of State would otherwise be delayed. The Postal Service maintains that no change should be made to proposed rule 3017.4(b).

Respectfully submitted,

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September 11, 2015